

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD L. DENNY)	
Claimant)	
VS.)	
)	Docket No. 213,519
STATE OF KANSAS)	
Respondent)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Carrier)	

ORDER

On January 28, 1998, the application of claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Bruce E. Moore on July 31, 1997, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Larry A. Bolton of Hutchinson, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Richard L. Friedeman of Great Bend, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

What is the nature and extent of claimant's injury and/or disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

Claimant alleged accidental injury on November 30, 1994, to his right knee. This injury was not disputed by respondent. However, claimant later alleged an aggravation of his low back stemming from this knee injury. The Administrative Law Judge, in considering the medical reports of Dr. John A. Tanksley, Dr. Kris Lewonowski, and Dr. C. Reiff Brown, found claimant's explanation for the back injury to be less than credible. Claimant's accident occurred on November 30, 1994. The first recorded mention of claimant's back complaints to a medical provider came on July 30, 1996, when claimant met with Dr. Lewonowski. The timing of claimant's back complaints is suspect when one considers the fact that claimant's E-1 was filed on June 6, 1996, with both the knee and back complaints listed.

In addition, the Administrative Law Judge found the testimony of Dr. Brown, a board-certified orthopedic surgeon, to be persuasive regarding claimant's current and past back difficulties. Claimant was diagnosed in 1989 through 1991 with a moderately severe bulge at L4-5 and degenerative disc disease. Dr. Brown, after examining the records of claimant from 1989 through 1991, found no evidence that claimant's degenerative disc disease had progressed or been accelerated by the 1994 accident. Dr. Brown opined that claimant had suffered no new injury to his back and does not believe that claimant's ongoing back complaints are attributable to claimant's knee injury of November 30, 1994.

The Administrative Law Judge went on to find that, as Dr. Brown had the opportunity to examine claimant's medical records over a several year time period, his opinion that claimant had not suffered any additional restrictions or task loss as a result of the November 30, 1994, injury to his knee was the most credible medical evidence on the issue of the nature and extent of claimant's injury and disability.

The Administrative Law Judge did award claimant a 40 percent functional impairment to the right lower extremity as a result of the original knee injury. The Appeals Board, in considering the medical reports of Dr. Brown, Dr. Lewonowski, and Dr. Tanksley, finds that this award is supported by a preponderance of the credible evidence and should be affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore, dated July 31, 1997, should be, and is hereby, affirmed and the claimant, Ronald L. Denny, is granted an award against the respondent, State of Kansas, and the State Self-Insurance Fund, for an injury occurring on November 30, 1994, to claimant's right knee.

Claimant is entitled to 64.32 weeks temporary total disability compensation at the rate of \$319 per week totaling \$20,518.08 followed by 54.27 weeks permanent partial disability compensation at the rate of \$319 per week in the amount of \$17,312.13 for a 40% loss of use of the right lower extremity, making a total award of \$37,830.21. At the time of this award, the entire amount is due and owing and ordered paid in one lump sum minus any amounts previously paid.

In all other regards the Award of the Administrative Law Judge is affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Larry A. Bolton, Hutchinson, KS
Richard L. Friedeman, Great Bend, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director